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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 IN RE: Bard IVC Filters Products Liability
10 Litigation,
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No. MDL 15-02641-PHX DGC
ORDER

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15 At the tenth case management conference on July 13, 2017, the Court and parties
16 discussed the discoverability of communications between Plaintiffs' experts, with the
17 Court attempting to provide some guidance on its interpretation of Rule 26(b)(4).
18 *See* Doc. 6765. The Court thereafter directed Plaintiffs to produce to Defendants all
19 discoverable communications among their experts and to provide a privilege log that
20 identifies the specific basis on which Plaintiffs conclude that any communications are
21 protected under Rule 26(b). Doc. 6799 at 2.

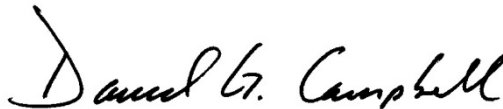
22 In their recent status report, the parties raised a dispute regarding Plaintiffs'
23 production of the expert communications and privilege log. Doc. 7854 at 11-17.
24 Plaintiffs state that they have produced all communications between attorneys and
25 experts excepted from Rule 26(b)(4)'s protection and, with one exception, have produced
26 every communication between experts even if attorneys were copied on the
27 communications. *Id.* at 12. Defendants take the position that every communication from
28 an expert either needs to be produced or listed on a privilege log. *Id.* at 13-14.

1 The dispute was addressed at the eleventh case management conference on
2 October 5, 2017. *See* Doc. 8144. The Court declined to require a privilege log but, with
3 the parties' consent, directed Plaintiffs to submit the expert communications withheld for
4 *in camera* review of ten randomly selected communications. Doc. 8113 at 1. Plaintiffs
5 provided the communications to the Court on October 13, 2017. *See* Doc. 8182.

6 The Court has completed its review and finds that the communications are
7 protected by Rule 26(b)(4) and were properly withheld. *See Izzo v. Wal-Mart Stores,*
8 *Inc.*, No. 2:15-cv-01142-JAD-NJK, 2016 WL 593532, at *4 (D. Nev. Feb. 11, 2016)
9 (finding that the withholding party met its burden of showing that expert-attorney
10 communications did not fall within one of the exceptions to Rule 26(b)(4)(C)).

11 **IT IS ORDERED** that Plaintiffs need not produce the withheld expert
12 communications or provide a privilege log on these communications to Defendants.

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14 Dated this 20th day of October, 2017.

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19 David G. Campbell
20 United States District Judge
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